

## **NOTICE OF PROPOSED REGULATIONS**

### **California Code of Regulations Title 15, Crime prevention and Corrections**

#### **Division 8 California Prison Industry Authority**

**NOTICE IS HEREBY GIVEN** that the California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) pursuant to the authority granted by Penal Code (PC) Sections 2808, 2809 and Executive Order D-58-86 (dated September 24, 1986) in order to implement, interpret and make specific Penal Code 2808, 2809 and Executive Order D-58-86, propose to adopt new Section 8106.2 of Article 6, of the California Code of Regulations (CCR), Title 15, Division 8, concerning sensitive position designation for the purpose of employee substance abuse testing.

#### **PUBLIC HEARING:**

At this time, no public hearing has been scheduled concerning the proposed adoption to regulations. Anyone may request a public hearing by contacting the Contact Person set forth below. Requests for public hearings must be made no later than 15 days prior to January 16, 2017.

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close, **January 16, 2017 at 5:00 p.m.** Any person may submit public comments regarding the proposed changes in writing. To be considered, comments must be received before the close of the comment period. Use one of the following to submit:

#### **MAIL or HAND DELIVER**

CALPIA/Legal Services Unit  
560 East Natoma Street  
Folsom, CA 95630

#### **FAX**

(916) 358-2709

#### **E-MAIL**

[PIAregs@calpia.ca.gov](mailto:PIAregs@calpia.ca.gov)

#### **CONTACT PERSONS:**

Please direct any inquiries regarding this action or questions of substance of the proposed regulatory action to:

**Dawn Eger, Legal Analyst  
California Prison Industry Authority  
560 East Natoma Street, Folsom, CA 95630  
Telephone (916) 358-1711**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Diana Harbaugh, Executive Secretary II  
California Prison Industry Authority  
560 East Natoma Street, Folsom, CA 95630  
Telephone (916) 358-1711**

## **AUTHORITY AND REFERENCE**

The California Prison Industry Authority (CALPIA) and the Prison Industry Board (PIB) pursuant to the authority granted by Penal Code (PC) Sections 2808, 2809 and Executive Order D-58-86 (dated September 24, 1986) in order to implement, interpret and make specific Penal Code 2808, 2809 and Executive Order D-58-86 (dated September 24, 1986), propose to adopt new Section 8106.2 of Article 6, of the California Code of Regulations (CCR), Title 15, Division 8, concerning sensitive position designation for the purpose of employee substance abuse testing.

## **INFORMATIVE DIGEST**

### **POLICY STATEMENT OVERVIEW:**

In order for CALPIA to function safely and efficiently, new regulations are needed to speed up the process for designating sensitive positions for the purpose of employee substance abuse testing. Current regulations<sup>1</sup> direct state agencies to seek California Department of Human Resources' (CalHR) approval for the designation of sensitive positions. CalHR's regulated process for designating sensitive positions is slow, nonproductive, and causing a threat to the safety of CALPIA employees and other individuals inside the workplace. CALHR stalled CALPIA's ability to test employees for substance abuse under reasonable suspicious circumstances for more than two years. CALPIA needs its own authority to quickly identify and designate current and future job assignments that are sensitive for safety reasons.

These proposed regulations will help to ensure that CALPIA operations are performed without undue risk of costly personal injuries and/or property damage caused by substance abuse. These regulations will provide a quicker process for CALPIA positions to be designated as sensitive for the purpose of employee substance abuse testing.

The proposed adoption will be vetted through the public process of the PIB, as required in PC 2808(h) and (i), and promulgated through the regulatory process as specified in the Administrative Procedure Act (APA). CALPIA will give notice to employees affected by the proposed regulation and give such employees the opportunity to submit their comments or alternative suggestions. The PIB will review these regulations at the next board meeting held on December 15, 2016. Upon approval, the PIB's Record of Vote and the applicable portion of the meeting minutes will be included in the rulemaking file. All rulemaking documents will be filed with the Office of Administrative Law (OAL) and are all available to the public on CALPIA's website.

### **Evaluation of Inconsistency/Incompatibility with Existing Regulations:**

During the process of developing this regulation, CALPIA has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing laws and regulations.

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<sup>1</sup> Section 599.961, Title 2, of the California Code of Regulations

**Local Mandates:**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500 through 17630.

**Fiscal Impact Statement:**

Cost to any local agency or school district that is required to be reimbursed in accordance with Government Code Sections 17500 through 17630: .....None

Cost or savings to any state agency: .....None

Other nondiscretionary cost or savings imposed on local agencies: .....None

Cost or savings in federal funding to the State: .....None

**Effect of Housing Costs:**

CALPIA has made an initial determination that the proposed action will have no significant effect of housing costs.

**Significant Statewide Adverse Economic Impact on Business:**

CALPIA has initially determined that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of CALPIA employees.

**Results of the Economic Impact Analysis/Assessment**

In accordance with the Government Code Section 11346.3(b), the CALPIA has made the following assessments regarding the proposed regulation:

**Creation or Elimination of Jobs within the State of California**

CALPIA has determined that increasing the list of substances that CALPIA employees can be tested for will have no impact on the creation or elimination of existing jobs within California because those jobs are not affected by the internal management of CALPIA employees.

**Creation of New Businesses or Elimination of Existing Businesses within the State of California**

Increasing the list of substances that CALPIA employees can be tested for will have no effect on the creation of new or elimination of existing businesses within California because those businesses are not affected by the internal management of CALPIA employees.

**Expansion of Businesses Currently Doing Business within the State of California**

Increasing the list of substances that CALPIA employees can be tested for will have no effect on the expansion of businesses currently doing business within the State of California because they are not affected by the internal management of CALPIA employees.

### **Benefits of the Regulations**

The proposed regulatory action will benefit CALPIA by providing a quicker process for CALPIA positions to be designated as sensitive for the purpose of substance abuse testing. These proposed regulations will help to ensure that CALPIA operations are performed without undue risk of costly personal injuries and/or property damage.

### **Cost Impacts on Representative Private Persons or Businesses**

CALPIA is not aware of any cost impacts that a representative, private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Effect on Small Businesses**

CALPIA has determined that this action has no significant adverse economic impact on small business because they are not affected the internal management of CALPIA inmate workers.

### **Consideration of Alternatives**

CALPIA must determine that no reasonable alternative considered by CALPIA, or that has otherwise been identified and brought to the attention of CALPIA, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective implementing the statutory policy or other provision of law.

Interested persons are invited to submit written statements or arguments with respect to any alternatives to the changes proposed during the written comment period.

### **Reports Relied Upon**

The CALPIA, in proposing these regulations, has not identified nor relied upon any technical, theoretical, or empirical study, report, or similar document.

### **Availability of Proposed Text, Initial Statement of Reasons, and Rulemaking Record; Documents on CALPIA's Website**

The Proposed Text, Initial Statement of Reasons, and all the information upon which this proposal is based have been placed in the rulemaking record, which is available to the public upon request directed to the CALPIA's contact person. The documents will also be made available on the CALPIA website: [www.calpia.ca.gov](http://www.calpia.ca.gov).

### **Availability of Changes to Proposed Text**

After considering all timely and relevant comments received, the PIB may approve the proposed regulations substantially as described in this Notice. If CALPIA makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the PIB reviews and approves the regulations as revised. CALPIA will accept written comments on the modified regulations for 15 days after the date on which they are made available. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice or can be viewed by visiting CALPIA's website [www.calpia.ca.gov](http://www.calpia.ca.gov).

### **Availability of the Final Statement of Reasons**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from CALPIA's contact person or by visiting the CALPIA website: [www.calpia.ca.gov](http://www.calpia.ca.gov)